BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEE GONZALEZ	)	
Claimant	)	
	)	
VS.	)	
	)	
HOME HEALTHCARE CONNECTION	)	
Respondent	)	Docket No. 1,027,600
	)	
AND	)	
	)	
TECHNOLOGY INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) requested review of the April 27, 2006, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found that claimant was injured out of and in the course of her employment with respondent. Accordingly, the ALJ found that claimant is entitled to temporary total disability compensation beginning February 7, 2006, until she is released to substantial and gainful employment. The ALJ also ordered all medical paid, and named Dr. Kenneth Jansson as claimant's authorized treating physician.

Respondent argues that claimant was not in the course and scope of employment at the time of her injury and is therefore not entitled to any benefits under the Workers Compensation Act.

Claimant has not filed an appeal brief with the Board. Claimant's brief was due on June 5, 2006. On July 11, 2006, claimant filed a motion to file her brief out of time. On July 19, 2006, respondent filed an objection to claimant's motion. Respondent's objection is sustained; claimant's motion is denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented to date, the Board makes the following findings of fact and conclusions of law:

Claimant is a home health nurse who has worked on and off for respondent since 1992. She last started back with respondent in September 2005. She also started with ProActive Home Health (ProActive) in September 2005. Claimant considers her work at respondent as part-time work, from 20 to 30 hours per week, with her full-time employer being ProActive. As such, this is not a situation involving two part-time employments as contemplated by K.S.A. 44-503a.

The personnel at ProActive knew she also saw clients for respondent, and claimant arranged her own schedule, scheduling clients for both ProActive and respondent. She tried to accommodate the clients if she could. During the time she worked for both companies, she never had a conflict in scheduling the clients.

Claimant is not paid mileage by respondent, unless she travels out of town. She is not paid for her travel time. There was no restriction from respondent that she drive the shortest route to the client's house from her house. She was not paid for filling out paperwork. She is only paid for the time she spends with a client. It was a requirement for the job that she have transportation and a valid Kansas drivers license. Claimant also was not paid for mileage or travel time by ProActive.

On February 7, 2006, she left a client she visited for ProActive and was on her way to visit a client for respondent. She was on I-135, which runs north and south through Wichita, and as she got on the off-ramp for Pawnee Street, her vehicle had a tire blow out. She lost control of the vehicle and hit a wall. She did not have her seat belt on at the time. She suffered a dislocation and twisting of her left knee. She immediately called respondent to let them know about the accident so they could get another nurse to the home of respondent's client. Claimant was hospitalized for two days after the accident and is still being treated and is undergoing physical therapy.

Claimant had made six calls the morning of the accident, all for ProActive and all east of I-135. None of her visits for ProActive that morning were on the west side of I-135. She had made her last call for Proactive before the accident sometime around 8:30 a.m. Her only call for respondent that day, which had been scheduled for 9 a.m., was west of I-135. She had more ProActive visits scheduled for later that morning.

Claimant admitted that if she were going home rather than to visit one of respondent's patients, she would have traveled the same way she did on February 7 when she had the accident. She also admitted that if she left her house and drove directly to visit respondent's patient, she would not have taken I-135. On February 7, 2006, she would have had no reason to be east of I-135 except for the visits she made for ProActive.

Claimant first filed a claim for workers compensation benefits against her full-time employer, ProActive. ProActive denied her claim because claimant was on her way to visit a patient of respondent at the time of the accident.

Shannon Barthelme, Director of Human Resources for respondent, affirmed that claimant was paid only for the time she was with a client and was not paid for her travel time or reimbursed for mileage. She testified that employees of respondent are required to have transportation, but there is no limitation that forbids them from using public transportation.

An injury arises out of employment if it arises out of the nature, conditions, obligations and incidents of employment.[1] Whether an accident arises out of and in the course of the worker's employment depends on the facts peculiar to the particular case.[2]

> The two phrases arising "out of" and "in the course of" employment, as used in our Workers Compensation Act, K.S.A. 44-501 *et seq.,* have separate and distinct meanings; they are conjunctive, and each condition must exist before compensation is allowable. The phrase "out of" employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. Thus, an injury arises "out of" employment if it arises out of the nature, conditions, obligations, and incidents of the employment. The phrase "in the course of" employment relates to the time, place, and circumstances under which the accident occurred and means the injury happened while the worker was at work in the employer's service.[3]

But K.S.A. 2005 Supp. 44-508(f) provides, in part, the following:

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence.

---

[1] *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

[2] *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 502, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

[3] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

K.S.A. 2005 Supp. 44-508(f) "bars an employee injured on the way to or from work from workers compensation coverage."[4] "The rationale for the 'going and coming' rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment."[5]

The Act specifically recognizes both a "premises" and a "special risk" exception to the general rule. But case law creates other exceptions, including when travel is an integral or inherent part of the job, when travel is for a special purpose, and when employees are paid for their travel time and/or expenses.

In *Messenger*,[6] the Kansas Court of Appeals applied an exception to the going and coming rule that allows workers compensation coverage where travel on public roadways is an integral or necessary part of the employment. An accident that occurred when Mr. Messenger was returning home from a temporary work site was held compensable because he was required to travel and provide his own transportation, he was compensated for his travel, and both Mr. Messenger and his employer benefitted from that travel arrangement. In holding that the going and coming rule did not apply, the Court of Appeals stressed the benefit that the employer derived from the travel arrangement.

> Kansas has long recognized one very basic exception to the "going and coming" rule. That exception applies when the operation of a motor vehicle on the public roadways is an integral part of the employment or is inherent in the nature of the employment or is necessary to the employment, so that in his travels the employee was furthering the interests of his employer.[7]

In *Kindel*, the Kansas Supreme Court approved the *Messenger* decision and stated:

> Although K.S.A. 1991 Supp. 44-508(f), a codification of the longstanding "going and coming" rule, provides that injuries occurring while traveling to and from employment are generally not compensable, there is an exception which applies when travel upon the public roadways is an integral or necessary part of the employment. [Citations omitted.] Because Kindel and other Ferco employees were expected to live out of town during the work weeks, and transportation to and from

---

[4] *Chapman v. Beech Aircraft Corp.*, 258 Kan. 653, 655, 907 P.2d 828 (1995).

[5] *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 46, 883 P.2d 768 (1994).

[6] *Messenger v. Sage Drilling Co.*, 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984).

[7] *Id.* at 437.

> the remote site was in a company vehicle driven by a supervisor, this case falls within the exception to the general rule.[8]

In a more recent decision, the Kansas Court of Appeals in *Brobst* reiterated that accidents occurring while going and coming from work are compensable where travel is either (a) intrinsic to the job or (b) required to complete some special work-related errand or trip. The Court of Appeals stated:

> . . . Kansas case law recognizes a distinction between accidents incurred during the normal going and coming from a regular permanent work location and accidents incurred during going and coming in an employment in which the going and coming is an incident of the employment itself.
>
> Under this third qualification to the going and coming rule, injuries incurred while going and coming from places where work-related tasks occur can be compensable where the traveling is (a) intrinsic to the profession or (b) required in order to complete some special work-related errand or special-purpose trip in the scope of the employment. This third exception has been noted in several Kansas cases, many of which post-date the 1968 premises and special hazard amendments to the Workers Compensation Act. [Citations omitted.][9]

Larson's[10] also recognizes the "inherent travel" exception to the going and coming rule.

> Several so-called "exceptions" to the basic premises rule on going and coming are applications of this principle: employees sent on special errands; employees continuously on call; and employees who are paid for their time while traveling or for their transportation expenses. The explanation of these exceptions, and the clue to their proper limits, is found in the principle that the journey is an inherent part of the service.[11]

In *Ridnour*, the Kansas Supreme Court stated:

> Kansas case law has recognized several exceptions to the K.S.A. 2004 Supp. 44-508(f) going and coming rule. One such exception provides that injuries incurred while going and coming from places where work-related tasks occur can

---

[8] *Kindel, supra* Note 3.

[9] *Brobst, supra* Note 1 at 773-74.

[10] 1 Larson's Workers' Compensation Law, § 14.04 (2005).

[11] *Id.*

> be compensable where the traveling is required in order to complete some special work-related errand or special-purpose trip in the scope of employment.[12]

The Kansas Supreme Court addressed the so-called dual purpose trip doctrine in *Tompkins*:

> Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. . . .[13]

Accidental injuries which occur on dual purpose excursions, where the benefit is both to the employer and the employee, are generally ruled compensable.[14] However, the dual purpose rule does not extend to factual situations where the errand would not have been undertaken if the personal errand had been abandoned or postponed.[15] This case, however, does not involve a business purpose coupled with a personal errand but, instead, involves dual business purposes for dual employers.

There is no question but that if claimant was alone traveling from her home to the home of the respondent's client, this accident would be compensable. Respondent argues that claimant's route would be different had she not been driving from the home of the last ProActive client. But the Board finds this distinction to be insignificant. The deviation was minor and the trip retained its business purpose.[16]

Claimant was on her way to a business errand for respondent. Although claimant may have taken a different route if she were intending to travel directly from her home, the route she traveled was not substantial in its duration, nature or in the distance involved. Accordingly, it was a minor, not a major or significant, deviation. The business purpose

---

[12] *Ridnour v. Kenneth R. Johnson, Inc.*, 34 Kan. App. 2d 720, Syl. ¶ 5, 124 P.3d 87 (2005), *rev. denied* __ Kan. __ (2006).

[13] *Tompkins v. Rinner Construction Co.*, 194 Kan. 278, 283, 398 P.2d 578 (1965) (quoting Vol. 1, Larson, Workmen's Compensation Law, § 18.0).

[14] 1 Larson's Workers' Compensation Law § 16 (2005).

[15] *Tompkins, supra* note 13.

[16] *See Foos v. Terminex*, 277 Kan. 687, 89 P.3d 546 (2004); *Kindel, supra* Note 3; and *Sumner v. Meier's Ready Mix*, 34 Kan. App. 2d 850, 126 P.3d 1127 (2006), *rev. granted* May 9, 2006.

was not lost or abandoned.[17] Therefore, the accident arose out of and in the course of claimant's employment with respondent.

The ALJ determined that "[t]ravel from client to client no matter who the claimant was working for was a necessary function of the claimant's employment."[18] In other words, travel was an integral part of claimant's employment with both ProActive and respondent. The Board agrees. Furthermore, as claimant was traveling as a part of her job duties with both employers, simultaneously, when her accident occurred, the two employers are jointly and severally liable for claimant's injuries.[19] For purposes of the Workers Compensation Act, a worker can be the employee of more than one employer at the same time.[20] In addition, an injury may be the responsibility of more than one employer.[21] Only one of the two employers are currently a party to this case. The ALJ awarded preliminary benefits to be paid by that employer, respondent herein. That award of preliminary benefits is affirmed.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated April 27, 2006, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2006.

_____

BOARD MEMBER

---

[17] *Woodring v. United Sash & Door Co.*, 152 Kan. 413, 103 P.2d 837 (1940); *see* 1 Larson's Workers' Compensation Law § 17 (2005).

[18] ALJ Order (April 27, 2006) at 1.

[19] See *Kuhn v. Grant County*, 201 Kan. 163, 439 P.2d 155 (1968); *Bendure v. Great Lakes Pipe Line Co.*, 199 Kan. 696, 701, 433 P.2d 558 (1967); *Bright v. Bragg*, 175 Kan. 404, 264 P.2d 494 (1953); *Hall v. Prostar, L.L.C. and Star Xpress, L.C.*, No. 1,012,310, 2005 WL 3030747 (WCAB Oct. 7, 2005).

[20] See, *e.g.*, *Scott v. Altmar, Inc.*, 272 Kan. 1280, 1283, 38 P.3d 673 (2002).

[21] See *U.S.D. No. 501 v. American Home Life Ins. Co.*, 25 Kan. App. 2d 820, 971 P.2d 1210, *rev. denied* 267 Kan. 889 (1999).

c: David L. Nelson, Attorney for Claimant
Joseph R. Ebbert, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director